



Guidance for Agency Heads

Paid emergency response leave for APS employees

On 24 December 2019 the Prime Minister issued a *Direction under subsection 21(1) of the Public Service Act 1999 - granting of paid leave to APS employees who are members of a recognised volunteer service and are deploying as part of an emergency service response* (the Direction). This guidance assists Agency Heads in the application of the Direction.

Purpose

1. This guidance supports the Prime Minister's Direction that APS employees who are registered members of a recognised volunteer service and are deploying as part of an emergency service response (APS volunteer) are granted leave on full pay.
2. Emergency service volunteers play a crucial role in protecting and supporting communities in times of need and should be supported to do so.

Legislative framework and agency action

3. Subsection 21(1) of the *Public Service Act 1999* (PS Act) provides that the Prime Minister may issue general directions in writing to Agency Heads. Directions issued under subsection 21(1) are legislative instruments.
4. APS Agencies should review relevant human resources policies and procedures to align with the Direction and this guidance.
5. Agencies should also ensure they are able to report on the use of paid emergency response leave granted in accordance with the Direction, including the number of employees granted leave and the total number of days.

Commencement and application of guidance

6. The Direction commenced on 24 December 2019 and will operate on an ongoing basis (unless repealed).
7. The Direction applies to all Agency Heads. The guidance is to be used by Agency Heads in the application of the Direction.
8. Other statutory office holders and heads of Commonwealth entities and companies are strongly encouraged to adopt this guidance.

Eligible emergency service activities

9. The [Australian Emergency Management Arrangements Handbook 2019](#) defines an **emergency** as an event, actual or imminent, which endangers or threatens to endanger life, property or the environment, and which requires a significant and coordinated response.
10. Eligibility for paid emergency response leave has two requirements:
 - a. membership, or membership-like association, volunteering with:
 - i. a **recognised emergency management body**; or
 - ii. an organisation which provides immediate support beyond frontline activities during an **emergency**; and
 - b. deployment as part of an emergency service response.
11. The principles for paid emergency response leave should be considered broadly in line with the provisions for community service leave for engaging in voluntary emergency management activities under the *Fair Work Act 2009* (FW Act).
12. Under section 109 of the FW Act, a voluntary emergency management activity must be:
 - a. dealing with an emergency or natural disaster;
 - b. engaged on a voluntary basis (whether or not the employee directly or indirectly receives an honorarium, gratuity or similar payment);
 - c. undertaken by an employee who is a member, or has a member-like association, with a recognised emergency management body; and
 - d. undertaken when the employee was requested on behalf of the body to engage in the activity.
13. The period for which an employee may request emergency response leave includes:
 - a. time when the employee engages in the activity;
 - b. reasonable travelling time associated with the activity; and
 - c. reasonable rest time immediately following the activity.

Evidence requirements

14. Depending on the circumstances, emergency response leave may be planned or unplanned. APS volunteers should let their managers know that they are members of a volunteer organisation and agree on how they will make contact if called upon to serve in an unexpected emergency activity.
15. When an APS volunteer is to be deployed and will be absent from their employment as part of an emergency service response, they must give their employer notice of that absence as soon as practicable (which may be after the absence has started) and advise the employer of the details of the activity, including the period, or expected period, of absence.

16. The Agency Head will require evidence that services were requested by a relevant organisation for the period of leave. This evidence should include confirmation of membership with a relevant organisation, the nature of the emergency service activity the employee is, or will be, undertaking, and the period for which the employee will be deployed. Satisfactory evidence is evidence that would satisfy a reasonable person in the circumstances.

Requests for additional leave

17. The Direction provides a minimum of 20 working days or 28 calendar days of paid leave for APS volunteers per calendar year, although additional paid leave may be granted upon request.
18. Requests should be for the period of time that the employee is engaged in emergency response activity, reasonable travelling time to and from the activity, and reasonable rest time for the employee immediately following the emergency response activity.
19. Additional leave should not be granted once the immediate emergency response has passed.

Accounting for leave

20. The Direction does not create a new leave type, as the ability to grant paid leave already exists in APS workplace arrangements.
21. Where a workplace arrangement provides for paid community service leave, or similar, this should be used in the first instance.
22. Where there is no emergency response leave provision in an agency's workplace arrangements, or it falls short of the minimum 20 working days or 28 calendar days, additional leave with pay should be granted under miscellaneous, or similar, leave.
23. Paid emergency response leave cannot be carried over from previous calendar years and cannot be cashed-out.
24. If an employee is on paid leave which is interrupted by an eligible emergency service response activity requiring their participation, the employee should have their paid leave re-credited.

Refusing a request for paid leave

25. Requests for paid leave should be considered on a case-by-case basis with agencies making all reasonable attempts to accommodate the leave request.
26. Where the employee's absence has the potential to disrupt services to the Australian public, agencies should engage with the employee and attempt to negotiate an outcome that is mutually agreeable, in the circumstances.

27. No request for paid emergency response leave (including a request for additional leave) which satisfies the eligibility criteria at paragraph 10 should be refused without the agreement of the APS Commissioner. Agency Heads must secure the APS Commissioner's agreement before any request satisfying the eligibility requirements is formally refused.
28. The Agency Head may only refuse to grant paid leave if they are of the opinion – agreed by the APS Commissioner – that granting the leave would significantly disrupt the provision of services to the Australian public.

Unpaid leave available to eligible volunteers

29. Under the National Employment Standards (the NES), the ability for an Agency Head to refuse paid emergency response leave does not prevent an APS volunteer taking unpaid community service leave, if they meet the associated criteria under the FW Act.
30. Further information on the NES is available on the Fair Work Ombudsman's website [here](#).

Enquiries

31. Situations may arise which are not adequately dealt with by this guidance. The exercise of good judgement is often required and it is the responsibility of the Agency Head to flexibly manage requests in line with the intent of the Direction.
32. Further guidance can be obtained by contacting the APSC Workplace Relations Group at workplacerelations@apsc.gov.au.

Attachment A: Flowchart to assist with administering paid emergency response leave

